Fees & Charges Review Committee

FINAL REPORT
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Treasury
ALBERTA

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SUMMARY

In October 1998, in the *Eurig Estate* case, the Supreme Court of Canada declared that the probate fees charged in Ontario, which had been established by regulation, were unconstitutional. The Court ruled that since the revenue collected was much greater than the cost of providing this compulsory service, the fee should be considered a tax and, as such, must be established in legislation.

Ontario and most other provinces responded to the *Eurig Estate* decision by placing their probate fees in legislation in order to protect the revenue generated. Alberta, however, established the Fees and Charges Review Committee. The Committee's mandate was to review all government fees and charges, other than taxes established in legislation, to determine if the amounts charged were appropriate. The Committee was also authorized to review the government's general policy on fees and charges, and to consider fees and charges levied by other government entities. Final recommendations were to be provided to the Provincial Treasurer by the Spring of 2000.

Based on extensive collaboration with government ministries, consideration of existing legal principles, and systematic analysis of the charges, the Committee has prepared recommendations calling for changes in Alberta's system of fees and charges. Several of these recommendations were provided to the Provincial Treasurer previously in an interim report. The Treasurer acted on those recommendations by reducing or eliminating more than 100 fees for a range of government services in *Budget 2000*.

Taken together, the changes recommended by the Committee are aimed at achieving greater fairness, clarity, and accountability in the way that Alberta levies fees and charges.

General Recommendations

A.1
Where there are clear rationales for charging less than the cost of providing the services, the province should not increase the charges to cost recovery levels.

Further, the province should clearly communicate to users the rationales for the charges and the degrees to which the services are subsidized.

B.1
The province should encourage other government entities to review their charges to ensure they are consistent with the principles established in the Eurig decision.

B.2
The province should periodically review existing arrangements with other government entities to ensure that it is in the best interest of the public for these entities to continue to deliver the services they have been delegated.

C.1
The province should develop a reasonable estimate of the cost of providing each service that is subject to a charge.

Further, this costing should be reviewed periodically.

C.2
The province should develop general guidelines for estimating the cost of providing services.

D.1
The province should use clear, consistent terminology when establishing charges in statutes and regulations.

E.1
To promote sound fiscal planning and greater accountability, ministries should introduce and revise charges during the annual budget and business planning process.

Specific Recommendations

1.1
The province should reduce fees for issuing letters of probate and administration so that the revenue generated reflects the cost of providing the services. Further, the province should reduce the number of fee categories.

1.2
To recover the extra costs incurred, the province should charge for re-submissions and additional transactions in issuing letters of probate and administration.

1.3
The province should not reduce the charge for filing a caveat as the charge promotes the timely and efficient probate of wills.

1.4
The province should not reduce charges for other surrogate court services since the charges reflect the cost of providing the services.

2.1
The province should reduce Land Titles Registry charges so that the revenue generated reflects the cost of operating the system. In reducing revenue, consideration should be given to achieving an equitable balance in the revenue generated by each charge.

Further, the province should include future systems redevelopment and worksite costs in the calculation of costs. Future systems redevelopment costs should be spread over the projected life of the system.

3.1
The province should reduce Land Related Information System charges so that the revenue generated reflects the cost of operating the system.

Further, the province should include future systems redevelopment and worksite costs in the calculation of costs. Future systems redevelopment costs should be spread over the projected life of the system.

4.1
The province should reduce Corporate Registry charges so that the revenue generated reflects the cost of operating the system.

Further, the province should include future systems redevelopment and worksite costs in the calculation of costs. Future systems redevelopment costs should be spread over the projected life of the system.

5.1
The province should reduce Personal Property Registry charges so that the revenue generated reflects the cost of operating the system.

Further, the province should include future systems redevelopment and worksite costs in the calculation of costs. Future systems redevelopment costs should be spread over the projected life of the system.

6.1
The province should not reduce charges to petroleum and natural gas agreement holders for late application and agreement reinstatement.

Further, the province should classify these charges as "penalties."

7.1
The province should not reduce charges that support the operation of the motor vehicle regulatory system.

Further, the province should articulate the purpose, scope, and benefits of the system to those who are regulated by it as well as the public at large. Details of the revenue and expenses associated with the system should be included in the appropriate ministries' annual reports.

8.1
The province should not reduce annual charges for loan and trust corporations.

Further, the province should classify these charges as "business license charges."

9.1
The province should not reduce charges for private investigator and security guard licenses.

Further, the province should classify these charges as "business license charges."

10.1
The province should not reduce charges for the appointment of commissioners for oaths.

Further, the province should classify these charges as "business license charges."

11.1
The province should reduce charges for filing pension plan annual information returns so that the revenue generated reflects the cost of operating the system.

Further, the province should include future systems redevelopment and worksite costs in the calculation of costs. Future systems redevelopment costs should be spread over the projected life of the system.

12.1
The province should reduce charges for mobile home and relocatable industrial accommodation labels so that the revenue generated reflects the cost of operating the system.

Further, the province should include future systems redevelopment and worksite costs in the calculation of costs. Future systems redevelopment costs should be spread over the projected life of the system.

INTRODUCTION

In October 1998, in the case of *Eurig Estate*, the Supreme Court of Canada decided that for a compulsory fee to be constitutionally valid the amount charged must reflect the cost of the service provided. This charge need only bear a reasonable relation to the cost of providing the service, meaning that the government will be accorded reasonable leeway in determining the proper amount. The Court ruled that if the level of revenue generated significantly exceeded the cost of providing the service, the fee should be considered a tax and, as such, must be established in legislation.

To ensure that Alberta's policy on fees and charges would be consistent with the law, the Fees and Charges Review Committee was established in the Spring of 1999. The Committee was responsible for reviewing all government fees and charges, other than taxes established by legislation, to determine if the amounts charged were appropriate relative to the services being provided. Taxes established by legislation were excluded from the review because they are consistent with the Constitution. The Committee was also authorized to make recommendations on the government's general approach to fees and charges, and to comment on fees and charges levied by other government entities. Recommendations were to be provided to the Provincial Treasurer by the Spring of 2000.

To provide the Committee time to complete its work, the *Government Fees and Charges Review Act* was passed. Essentially, the *Act* protected the government's fees and charges from legal challenges, and prevented the government from increasing fees while the review was in progress. The *Act* will expire on July 1, 2000.

In this report, the term "fee" refers to a levy for the provision of a specific service or for benefits flowing from a valid regulatory system. "Charge" is a general, comprehensive term that refers to all types of levies, including taxes, fees for services, fees in support of a valid regulatory system, business license charges, proprietary charges, penalties, and deterrents.

GUIDING PRINCIPLE

To guide its analysis and subsequent recommendations, the Committee established the following general principle, which was drawn from the *Eurig Estate* decision:

> *Where a compulsory charge is a genuine fee for service, the fee should reflect the cost of providing the service.*

To assist in applying this general principle, the Committee considered principles established in related legal cases. These related legal principles are described in the next section.

RELATED LEGAL PRINCIPLES

To determine whether a charge was a genuine fee for service or some other type of charge, the Committee referred to legal principles established in the *Eurig Estate* decision and other cases. These principles, in basic form, are described below.

Compulsory Charges

When the court speaks of a compulsory charge, it focuses on whether the law either *actually* requires that a person pay the levy upon engaging in an activity that is basic in Canadian society, or *practically* requires a person to make payment in those circumstances. An example of an actual compulsion is income tax. A person generally must work in Canadian society. Having done so, a person is required to pay tax on income earned. An example of a practical compulsion is the payment of probate fees. While a person is not required by law to apply for probate, in many cases it is a practical requirement. It is often necessary for the executor to obtain probate in order to comply with his or her legal obligations. An example of a non-compulsory charge would be a levy for engaging in a recreational activity, such as camping. In this case, the individual has a genuine choice as to whether to engage in the activity.

Taxes

To determine whether a charge is a tax, it is necessary to examine its form and purpose. The only charges that will be characterized as taxes are those involving an actual or practical obligation or compulsion to engage in an activity and make payment. To determine if a given charge is a tax, it is first necessary to ascertain whether an individual is compelled, in

the sense of being under a legal or practical duty, to engage in a particular activity and make payment. Where an individual has a genuine choice as to whether or not to engage in the activity it is unlikely that the charge at issue will be viewed as a tax.

A compulsory charge that is:

- imposed under the authority of the legislature;
- by a public body;
- for a public purpose; and is
- enforceable by law

will constitute a tax if its purpose is the raising of a revenue for general governmental purposes.

A province is generally restricted to imposing direct taxation. If the general tendency is for the tax to be paid by the very person taxed, then it is direct. A tax imposed under s. 92(2) of the *Constitution Act* must also comply with s. 53 of the *Constitution Act*. This means that the tax itself (but likely not various details pertaining to it) must be established by the legislature.

Business License Charges

Provincial charges that are imposed on holders of various forms of business licenses may generally raise revenue. These types of charges should be considered separately from fees for service as there is a specific head of power under the *Constitution Act* – s. 92(9) – authorizing a province to raise revenue through this type of charge. If license charges are direct, they are validly imposed pursuant to s. 92(9). If license charges are indirect, they are only validly imposed by a province if their purpose is to raise monies for a valid regulatory scheme. An indirect charge is one that is imposed on one person with the expectation that the cost will be passed on to another.

Proprietary Charges

A province may levy various charges in the exercise of its proprietary rights over public property. These charges may be either direct or indirect and are to be differentiated from taxes and from all other charges unrelated to public property. Various charges, including license charges, rents or royalties for the exploitation of provincially owned natural resources are

examples of proprietary charges. Charges for the sale of provincially owned products, such as books, liquor, electricity, rail travel or other goods and services produced in a commercial way are further examples.

Fees for Service

A province may validly impose fees that are established in order to raise revenue for the cost of providing a specific governmental service. This revenue need only bear a reasonable relation to the cost of providing a service, meaning that government will be accorded reasonable leeway in determining the proper amount. Even if a surplus is raised, this will not render the charge a tax if the purpose is to obtain funds to defray the expenses associated with the service.

Generally, government should endeavour to ensure that each payor is assessed a proportionate amount of the overall cost of providing a service. *Ad valorem* charges, that is charges tied directly to the value of property, will probably not qualify as proper fees for service, unless and to the extent that they reflect the cost of providing the service or the degree of difficulty or other exceptional factors.

Fees in Relation to a Regulatory Scheme

A province may establish a valid regulatory scheme under its many regulatory heads of power under the *Constitution Act*. A regulatory scheme will manage, control or regulate some important aspect of the activities of a group of individuals in order to provide some general benefit to members of the group. Fees that are charged in order to defray the costs of such a scheme will be valid provided that there is a reasonable relationship to the cost of the scheme.

Regulatory schemes may be established in a variety of ways. They need not be established explicitly by legislation, but it must be possible to demonstrate that the scheme in question has been consciously developed and is being maintained as a genuine planned enterprise. Government guidelines or other documents will be helpful in communicating how the regulatory scheme was developed and how it is being monitored. It is necessary to be able to articulate with some precision the purpose of the scheme. Of particular assistance

will be accounting records which reveal efforts to monitor revenue and match it to the expenses of the scheme.
Fees in relation to a regulatory scheme, while similar to fees for service, bear some important differences. In a regulatory scheme, there will typically not be a specific government service being provided. Rather, a broad scheme, designed to assist payors in general terms will be established. Greater discretion in determining the appropriate amounts to charge various payors will generally be accorded government than is the case for fees for service. This is in part because it is often not possible to establish a direct correlation between the cost of operating the overall scheme and the benefits and costs attributable to individual payors. While it is likely that some concept of proportionality must be built into the fee structure, the requirements are less stringent than is the case with a fee for service. The scheme as a whole must be assessed in relation to the group of beneficiaries as a whole. For example, even if a given agricultural producer could argue that the fees that he must pay are higher than the fees charged another producer, this does not necessarily render the fees charged in relation to an agricultural product marketing scheme invalid. There may be valid reasons for the higher fees, taking into account the structure and purpose of the scheme in its entirety.

Penalties

The province has the power to impose penalties under its jurisdiction over property and civil rights and local matters. A penalty acts as a punishment for failure to abide by a legal requirement.

Deterrents

The province has the power to establish deterrents under its jurisdiction over property and civil rights and local matters. A deterrent is intended to discourage certain conduct, so as to ensure the proper functioning of a governmental service or plan.

STEPS OF ANALYSIS

In completing this review, the Committee found that the majority of government charges generated revenues that were either equal to or less than the cost of providing the services and, therefore, were appropriate in light of the *Eurig Estate* decision. A detailed list of these charges is contained in the Appendix to this report.

In collaboration with the ministries, the Committee's work was divided into three phases.

In the first phase, the ministries identified all government charges whose revenue exceeded expense. Using the principles established in the *Eurig Estate* decision and other legal cases, the Committee then categorized each charge as either a fee for service, a fee in support of a valid regulatory system, a proprietary charge, a business license charge, a deterrent, or a penalty. Proprietary charges, business license charges, deterrents and penalties were excluded from further review since the province has the power to levy these types of charges and they were not commented on in the *Eurig Estate* decision. Next, the remaining charges were examined to determine if appropriate costs had been included. The Committee noted that the treatment of indirect costs and future capital requirements varied among ministries. The Committee worked with the ministries to ensure that only appropriate costs were included. Specific recommendations were made on the basis of existing legal principles and each charge's background.

In the second phase, the ministries identified all government charges where the revenue generated was either equal to or less than the cost of providing the services. The ministries were asked to provide rationales for charging less than cost. A general recommendation was made on the basis of these explanations.

In the last phase, the Committee considered charges levied by other government entities in light of these two questions:

1. Do the principles established in the *Eurig* decision apply to charges levied by other government entities?

2. If so, who bears prime responsibility for ensuring that charges levied by other government entities are consistent with the *Eurig* decision?

To address the questions, the Committee reviewed provincial legislation governing the entities as well as considered existing legal principles. General recommendations were made on the basis of this analysis.

GENERAL RECOMMENDATIONS

Charges Lower Than Cost

Background

Most of the charges levied by the Alberta government do not recover the cost of providing the services. Some examples of subsidized services include health care, provincial court services, food inspection, environmental assessment, and information provided under the *Freedom of Information and Protection of Privacy Act*. The ministries indicated that charges less than cost are levied primarily to ensure that services which advance the public good are affordable and accessible.

For instance, with health care services in 1998-99, the revenue generated from premiums recovered only 14% to 17% of the costs of providing the services, depending on what costs were included (see table). These nominal premiums are intended to generate public awareness of the costs of providing a universal health care system.

1998-99 Health Care Expenses
($000)

Description	Amount		Covered by Premium Revenue*
Direct Health Care Costs for Insured Services:			
Health Authorities	2,822,883		
Medical Services	863,989		
Ambulance Services	32,235		
Out of Province Hospital	39,388		
Sub-total		**3,761,495**	**17.31%**
Administration Costs:			
Billing and Collecting Premiums	10,946		
Processing Claims from Service Providers	7,071		
Sub-total		18,017	
Total Costs of Providing Insured Services		**3,779,512**	**17.23%**
Other Health Care Related Expenses		585,078	
Sub-total		**4,364,590**	**14.92%**
Ministry Support Services		64,527	
TOTAL		**4,429,117**	**14.70%**

*Premium revenue is $651,171.

Considerations

- There are clear rationales for continuing to charge less than cost recovery for certain government services.
- Generally, these services provide benefits to the public as a whole as well as individual users, and therefore do not warrant full cost recovery.
- Nominal charges ensure that the services remain affordable and accessible to all Albertans.

Recommendation A.1

Where there are clear rationales for charging less than the cost of providing the services, the province should not increase the charges to cost recovery levels.

Further, the province should clearly communicate to users the rationales for the charges and the degrees to which the services are subsidized.

Charges Levied by Other Government Entities

Background

Other government entities are public bodies which have been established under provincial legislation to provide specific services on behalf of the government. Some examples of other government entities are agricultural boards and commissions, municipalities, delegated administrative organizations, regulatory councils and associations, school boards, and universities and colleges.

The Committee determined that other government entities are subject to the principles established in the *Eurig Estate* decision. That is, they may have imposed charges that will be characterized as taxes where they meet the criteria for taxation. The question of whether a given charge is a tax must be analyzed on a case by case basis, considering factors such as the degree of government supervision or control of the entity, whether the charge is compulsory, and whether the revenues raised are used for a public purpose (see Related Legal Principles section).

Virtually all other government entities possess characteristics that make them distinctive from government. In many cases, legislation gives these entities complete or substantial discretion in setting the amounts of their charges. This limits the extent to which the government can influence these organizations.

Considerations

- The *Eurig* decision applies to charges levied by other government entities. Therefore, these charges should be reviewed to ensure that they are consistent with the principles established in that decision.
- Given that most other government entities are sufficiently autonomous and distinct from government, they are best left to their own deliberations. However, the government is responsible for ensuring that existing arrangements with these entities are in the best interest of the public.
- Government involvement in the review of charges levied by other government entities should be limited to informing the entities of the potential risks arising from the possible application of the *Eurig* decision and providing guidance if requested.

Recommendation B.1
The province should encourage other government entities to review their charges to ensure they are consistent with the principles established in the Eurig decision.

Recommendation B.2
The province should periodically review existing arrangements with other government entities to ensure that it is in the best interest of the public for these entities to continue to deliver the services they have been delegated.

Estimating Costs

Background

The Committee observed that many ministries had difficulty estimating the costs of providing services that were subject to charges. In particular, ministries had difficulty identifying the types of indirect costs that should be allocated, how costs shared with other ministry activities should be allocated, and how costs associated with future capital requirements should be determined.

At present, the government does not have general guidelines for estimating the cost of services. However, Treasury has indicated that the issue is under review by an inter-ministry working committee. The committee is working toward developing a framework which identifies the types of costs that should be allocated and how allocations should be estimated.

Considerations

- Estimating costs can be complex, especially when shared costs must be allocated, future costs are uncertain, and guidelines are absent.
- The Committee recognizes that it is not possible to allocate all costs of providing government services.
- Estimating the costs of services for which charges are levied would help to ensure that charges are consistent with legal principles established in the *Eurig Estate* and other decisions.
- The establishment of elaborate cost accounting systems is not necessary to estimate costs. The *Eurig* decision states that a reasonable estimate of the cost of providing a service will suffice.

Recommendation C.1

The province should develop a reasonable estimate of the cost of providing each service that is subject to a charge.

Further, this costing should be reviewed periodically.

Recommendation C.2

The province should develop general guidelines for estimating the cost of providing services.

Terminology

Background

The Committee observed a lack of clarity and consistency in the use of the terms "fee," "charge," and "license" in provincial statutes and regulations. The terms are not defined in legislation, and the same terms are often used to refer to different types of charges.

Considerations

The lack of clear and consistent terminology is confusing.

Recommendation D.1

The province should use clear, consistent terminology when establishing charges in statutes and regulations.

Process for Introducing and Revising Government Charges

Background

The Committee received inquiries from the ministries regarding the process for introducing and revising government charges following the completion of the review.

Generally, approval to introduce new charges or revise existing charges is obtained through the government's annual budget and business planning process. Ministries identify proposed fee changes in their budget submissions and the changes are considered by Treasury Board within the context of the overall fiscal plan. All fee changes are published in the new Budget.

Ministries also may introduce or revise fees during the fiscal year with the approval of Treasury Board and/or Cabinet.

Considerations

- Introducing and revising charges through the annual budget and business planning process promotes sound fiscal planning and greater accountability.
- An increasing number of fees are being changed outside of the budget and business planning process.

Recommendation E.1

To promote sound fiscal planning and greater accountability, ministries should introduce and revise charges during the annual budget and business planning process.

SPECIFIC RECOMMENDATIONS

Surrogate Court Charges

Background

There are two general categories of surrogate court charges.

The first category includes issuing letters of probate and administration. The charge for this service is based on the value of the estate. There are 8 different fee categories that range from $25 to $6,000. The Ministry of Justice has estimated that the current average cost of issuing a letter of probate is $215. Some variances in cost can be reasonably attributed to the size of the estate. However, most variances are the result of complicating matters such as the number of times the application must be reviewed due to missing or incomplete information, the number of beneficiaries involved, the number of applications for advice and direction from the court, and the number of caveats filed. For example, between 60% and 70% of applications received are returned at least once due to incomplete or erroneous information provided. Each time an application is returned, approximately one hour is added to the processing time.

The second category includes services such as opening and maintaining court files, processing applications of trusteeship, issuing supplemental grants and grants of double probate, filing caveats, and searching, certifying, and copying documents. A flat charge is levied for each of these services. With the exception of caveat filing, the charge reflects the cost of providing the service. The charge for filing a caveat is higher than the cost of that service in order to prevent the frivolous and vindictive filing of caveats.

In 1998-99, revenue generated from charges for surrogate court services was $4.9 million, while the cost of providing these services was $1.1 million. Approximately $4.3 million of this revenue was generated through charges for issuing letters of probate.

Considerations

- Most surrogate court charges should be viewed as fees for service as they are levied in order to raise revenue for the cost of providing specific court services. They do not support a valid regulatory system.
- The revenue generated from issuing letters of probate and administration exceeds the cost of providing the service.

- Some variances in cost are attributable to the size of the estate. However, most variances in cost are the result of re-submissions or additional transactions required to process applications.
- The charge for filing a caveat should be viewed as a deterrent because it is intended primarily to prevent a particular type of behavior. The filing of caveats encumbers the process of probating a will and increases costs. The higher-than-cost charge for filing a caveat discourages the filing of unwarranted caveats.
- Charges for most other surrogate court services reflect the cost of providing the services.

Recommendation 1.1
The province should reduce fees for issuing letters of probate and administration so that the revenue generated reflects the cost of providing the services.

Further, the province should reduce the number of fee categories.

Recommendation 1.2
To recover the extra costs incurred, the province should charge for re-submissions and additional transactions in issuing letters of probate and administration.

Recommendation 1.3
The province should not reduce the charge for filing a caveat as the charge promotes the timely and efficient probate of wills.

Recommendation 1.4
The province should not reduce charges for other surrogate court services since the charges reflect the cost of providing the services.

Land Titles Registry Charges

Background

Under the *Land Titles Act*, the Alberta government is responsible for registering land-related documents. Charges are levied for registering documents such as land transfers, mortgages, caveats, liens, easements, writs, and survey plans, as well as for searching the Land Titles Registry.

These services are delivered through the following three primary channels:

- Land Titles Office – All land title and survey plan registration services are provided directly by the government through two offices (Edmonton and Calgary). Registration charges vary depending on the document type and how many titles are affected. A flat charge is levied for the registration of caveats, liens, discharges, and easements. A flat charge plus a charge per $1,000 of value or per parcel is levied for registration of titles, mortgages, and survey plans.
- Alberta On-Line (AOL) – This is an on-line service that is provided to private businesses, which pay a subscription fee and flat charge per transaction to conduct searches of the land titles registry. AOL subscribers can also have access to the province's Personal Property and Corporate Registries.
- Registry Agents – This is a network of over 228 privately-owned businesses throughout Alberta that provides search services on the Land Titles Registry. In addition to the government charge per search, land title searches provided by private agents include a service fee that varies among agents.

In 1998-99, revenue generated from Land Titles Registry charges was $61.6 million, while the direct cost was $15.3 million. If indirect costs such as future systems development and worksite costs are included, the cost was $25.2 million. Approximately $45.8 million of the revenue from land titles charges was generated through charges for title and mortgage registrations at the Land Titles Offices.

Considerations

- Land Titles Registry charges should be viewed as fees in support of a valid regulatory system and, as such, should reflect the cost of operating the system.
- Land Titles Offices provide land registration and information services, and have custody of all original land titles and source documents. Government staff examine and register the documents, issue new titles, and guarantee accuracy of the information. Registration establishes legal ownership of a property.
- The revenue generated from the Land Titles Registry exceeds the direct and indirect costs of operating the system by $36.4 million, while the revenue generated from the registration of titles and mortgages at the Land Title Offices exceeds cost by $40.3 million.
- Title and mortgage registrations are flat fees plus $1 per $1,000 of value. The cost of registering a title or mortgage does not vary with the value of the property.
- Indirect costs such as the enhancement of the information technology system for the land titles registry, registry agent support, registries on-line support, policy development, administration, executive management, and departmental support staff are significant expenses.

Recommendation 2.1

The province should reduce Land Titles Registry charges so that the revenue generated reflects the cost of operating the system. In reducing revenue, consideration should be given to achieving an equitable balance in the revenue generated by each charge.

Further, the province should include future systems redevelopment and worksite costs in the calculation of costs. Future systems redevelopment costs should be spread over the projected life of the system.

Land Related Information System Charges

Background

The Land Related Information System (LRIS) is similar to AOL which was described in the previous section. It is an on-line service that is provided to private businesses, which pay a subscription fee and flat charge per transaction to conduct searches of the land titles registry, the survey plan index, and crown land records. LRIS differs from AOL in that its subscribers can not have access to the province's Personal Property and Corporate Registries.

There is a plan to phase out LRIS by integrating its services into AOL.

In 1998-99, revenue generated from LRIS charges was $3.3 million, while direct and indirect costs were $974,000.

Considerations

- LRIS charges should be viewed as fees in support of a valid regulatory system and, as such, should reflect the cost of operating the system.
- Land Titles Offices provide land registration and information services, and have custody of all original land titles and source documents. Government staff examine and register the documents, issue new titles, and guarantee accuracy of the information.

Recommendation 3.1

The province should reduce Land Related Information System charges so that the revenue generated reflects the cost of operating the system.

Further, the province should include future systems redevelopment and worksite costs in the calculation of costs. Future systems redevelopment costs should be spread over the projected life of the system.

Note: LRIS services were integrated with AOL on December 1, 1999.

Corporate Registry Charges

Background

The Corporate Registry incorporates and registers all corporations, business names, extra-provincial corporations, societies, and non-profit organizations in the province. Additionally, annual returns, amendments, revivals, dissolutions, name changes, amalgamations, and continuances are filed with the registry. Searches of the registry are also conducted. A flat charge is levied for each of these services.

The majority of Corporate Registry services are performed by authorized service providers. These are private sector firms that have been authorized by the government to offer some or most corporate registry services. An authorized service provider can be located in a registry agent office, law firm, accounting firm, or search house. In addition to the government charge, authorized service providers charge a service fee which can vary among providers.

In 1998-99 revenue generated from Corporate Registry charges was $14.1 million, while the direct and indirect costs of providing these services was $2.8 million.

Considerations

- Corporate Registry charges should be viewed as fees in support of a valid regulatory system and, as such, should reflect the cost of operating the system.
- Corporate Registry validates incorporations and registration documents to ensure they meet the requirements set by law. If the requirements are met, the documents are filed and a certificate is issued.
- The Corporate Registry database allows the public to identify the directors and shareholders of corporate entities.

Recommendation 4.1

The province should reduce Corporate Registry charges so that the revenue generated reflects the cost of operating the system.

Further, the province should include future systems redevelopment and worksite costs in the calculation of costs. Future systems redevelopment costs should be spread over the projected life of the system.

Personal Property Registry Charges

Background

The Personal Property Registry provides on-line registration and search services for claims against personal property. The term "personal property" is used to describe consumer goods such as motor vehicles, household and personal items, industrial or farming equipment, or aircraft. It also includes all property other than land, chattel paper, securities, documents of title, instruments, money or intangibles.

Personal Property Registry services are delivered through the following two channels:

- Alberta On-Line (AOL) – This is an on-line service that is provided to private businesses, which pay a subscription fee and flat charge per transaction to perform some registrations and searches of the personal property registry. AOL subscribers can also have access to the province's Land Titles and Corporate Registries.
- Registry Agents – This is a network of over 228 privately-owned businesses throughout Alberta that provides registration and search services on the personal property registry. In addition to the government flat charge per transaction, personal property services provided by private agents include a service fee that is market driven and varies among agents.

In 1998-99 revenue generated from Personal Property Registry charges was $11.4 million, while direct costs were $2.5 million. If indirect costs such as future systems development and worksite costs are included, the cost rises to $2.9 million.

Considerations

- Personal Property Registry charges should be viewed as fees in support of a valid regulatory system and, as such, should reflect the cost of operating the system.
- The Personal Property Registry contains information about claims against personal property. Under the *Personal Property Security Act*, certain claims against personal property must be registered to avoid possible loss. Registration gives the person a better legal right to the property.

Recommendation 5.1

The province should reduce Personal Property Registry charges so that the revenue generated reflects the cost of operating the system.

Further, the province should include future systems redevelopment and worksite costs in the calculation of costs. Future systems redevelopment costs should be spread over the projected life of the system.

Late Application and Agreement Reinstatement Charges

Background

Late Application Fee – Agreements under the *Mines and Minerals Act* granting rights to petroleum, natural gas, or both, have an initial term of 5 years, after which they can be continued if conditions relating primarily to productivity are satisfied and maintained. Continuation of these rights beyond the initial 5 year term is obtained on application by the agreement holder, which must be made within specified time limits. Thus, the onus is placed on the holder to determine which of its agreements should be continued and to make the required applications. Since the rights have a high potential value, the industry asked the Ministry of Resource Development to provide a back-up system whereby after the application time limit expires, it endeavours to identify rights that may be eligible for continuation but were missed by the agreement holder. The holder is then allowed to submit a late application, but is charged a $5,000 late application fee. The fee is set at a high level to act as a deterrent to poor continuation practice by agreement holders. The fee was established in collaboration with the petroleum and natural gas industry.

Agreement Reinstatement Fee – Agreements may be cancelled or otherwise terminated for a variety of reasons due to inadvertence of the holder (e.g., failure to pay annual rental). In some cases, where a timely request for reinstatement is received and the circumstances warrant reinstatement, the Ministry will reinstate the agreement and charge the agreement holder a $5,000 reinstatement fee. The fee is set at a high level to act as a deterrent to inefficient agreement administration practices by agreement holders. The fee was established in collaboration with the petroleum and natural gas industry.
In 1998-99, revenue generated from charges for late application and agreement reinstatement was $30,000, while the cost of administering the charges was $3,000. These charges became effective June 1, 1998. Consequently, the revenue generated from them is expected to be higher in subsequent fiscal years.

Considerations

- Energy Late Application and Agreement Reinstatement charges should be viewed as penalties as they are levied for contravening efficient continuation and agreement administration practices in the petroleum and natural gas industry. They are not levied to generate revenue to pay for the cost of providing a specific service.
- The charges are endorsed by the petroleum and natural gas industry.

Recommendation 6.1

The province should not reduce charges to petroleum and natural gas agreement holders for late application and agreement reinstatement.

Further, the province should classify these charges as "penalties."

Motor Vehicle Regulatory System Charges

Background

Alberta's motor vehicle regulatory system tries to ensure the safety of people using the province's highways by regulating the use and operation of motor vehicles on highways, providing for driver enforcement and education programs, establishing vehicle standards, maintaining the highways in a good state of repair, and providing compensation for personal injury resulting from motor vehicle accidents involving uninsured or unidentified vehicles in Alberta.

The *Motor Vehicle Administration Act, Highway Traffic Act, Off-highway Vehicle Act, Motor Transport Act,* and *Motor Vehicle Accident Claims Act* provide a complete and detailed code of regulations as illustrated in the following:

- Requirements and standards for the issuance of operator's licenses and vehicle registrations, and operation of vehicles on roads;
- Requirement for liability insurance coverage;
- Responsibilities in respect to the reporting of accidents;
- Driver monitoring and enforcement programs such as suspension or cancellation of operator's licenses or vehicle registrations, reviews respecting the health and/or the conduct of drivers, and disqualification of persons from driving;
- Standards for speed limits, traffic control devices, and rules of the road;
- Standards with respect to the operation of commercial vehicles;
- Standards with respect to the operation of off-highway vehicles;
- Standards with respect to vehicle equipment and safety; and
- A compensation plan for persons who are injured or killed in motor vehicle accidents caused by uninsured or unknown or unascertainable motorists.

The motor vehicle regulatory system is administered jointly by the ministries of Infrastructure, Government Services and Justice. The following charges are levied to support the operation of the system:

Motor Vehicle Registry Charges - Alberta Registries (Government Services) oversees the motor vehicle system database and provides most services through its network of Registry Agents. Registry Agents currently deliver licensing, registration, search,

and driver-testing services to businesses as well as the general public. In addition to the government flat charge per transaction, Registry Agents charge a service fee of $5.00 for capped services and a variable, market-driven fee for uncapped services.

Charges for Commercial Carrier Permits – The Motor Transport Board (Infrastructure) levies charges for issuing special permits authorizing the operation of public vehicles in instances where operation is otherwise prohibited. The charges payable for overweight and overdimension permits vary from $15 to $300 depending upon the extent of the infraction and duration of the permit.

Motor Vehicle Accident Claim (MVAC) Program Charges – The MVAC program pays for settlements arising from motor vehicle accidents involving uninsured or unidentifiable vehicles in Alberta. The program is administered by the Ministry of Justice and is supported through an annual charge of $6 per vehicle which is included in all motor vehicle registration charges.

As shown in the table below, 1999-2000 revenue generated from charges for the motor vehicle regulatory system was $227.8 million, while the cost of operating the system was $255 million.

1999-2000 Revenue Generated from the Motor Vehicle Regulatory System

($000)

	1999-2000 Revenue				1999-2000 Estimated Expenses			
Program	Infrastructure	Justice	Government Services	Total	Infrastructure	Justice	Government Services	Total
Motor Vehicle Related Programs								
Vehicle Registrations			166,435	166,435			23,675	23,675
Vehicle Safety	14,014		190	14,204	12,911		110	13,021
Motor Vehicle Accident Claim Plan		13,521		13,521		22,291		22,291
Motor Vehicle Related Programs	**14,014**	**13,521**	**166,625**	**194,160**	**12,911**	**22,291**	**23,785**	**58,987**
Driver Related Programs								
Driver Licensing			32,322	32,322			13,209	13,209
Driver Safety			55	55	4,116		7	4,123
Driver Monitoring & Enforcement			1,251	1,251	3,408		112	3,520
Total Driver Related Programs			**33,628**	**33,628**	**7,524**		**13,328**	**20,852**
Road and Traffic Safety								
Road Safety Programs					7,095			7,095
Road Maintenance					168,072			168,072
Total Road and Traffic Safety					**175,167**			**175,167**
TOTAL	**14,014**	**13,521**	**200,253**	**227,788**	**195,602**	**22,291**	**37,113**	**255,006**

Considerations

- Motor Vehicle Registry charges, charges for commercial carrier permits, and MVAC charges should be viewed as fees in support of a valid regulatory system.
- The system regulates owners and operators of motor vehicles in Alberta to their benefit as well as their burden.
- The Code of Regulation details the obligations that are imposed on all owners and operators of vehicles. Thus the individual owner or operator must comply with this Code of Regulation, but also benefits from the fact that other owners and operators of motor vehicles must comply with the Code as well.
- Compliance with the Code of Regulation contributes to the safety of all persons using the highways.
- In addition, as the operation of motor vehicles on highways causes the deterioration of those highways, a program of highway maintenance is a necessary component of the regulatory system and is one that benefits all owners and operators of motor vehicles in terms of safety, convenience and the reduction of wear and tear on their vehicles.
- The cost of operating the motor vehicle regulatory system exceeds the revenue generated by $27.2 million.

Recommendation 7.1
The province should not reduce charges that support the operation of the motor vehicle regulatory system.

Further, the province should articulate the purpose, scope, and benefits of the system to those who are regulated by it as well as the public at large. Details of the revenue and expenses associated with the system should be included in the appropriate ministries' annual reports.

Loan and Trust Corporation Annual Charges

Background

Under the *Loan and Trust Corporations Act*, every registered loan and trust corporation operating in Alberta must pay an annual fee before June 30th. The charge is based on the value of the corporation's assets. There are six fee categories that range from $3,000 to $10,000 or more. In return for this fee, Treasury maintains a database of registered corporations, responds to market conduct inquiries, and regularly reviews and updates loan and trust corporation legislation.

The ministry also reviews Alberta incorporated corporations annually to ensure that they comply with legislation. Reviews of federal and other provincially incorporated corporations are the responsibility of the incorporating jurisdiction.

In 1998-99, revenue generated from loan and trust corporation annual charges was $466,000, while the cost was $165,000.

Considerations

- The annual charge for operating a loan or trust corporation should be viewed as a license to conduct business in the province.
- There is a specific head of power under the *Constitution Act* which authorizes a province to raise revenue through charges for business licenses.
- Larger corporations generally are more complex and require more time to review.

Recommendation 8.1

The province should not reduce annual charges for loan and trust corporations.

Further, the province should classify these charges as "business license charges."

Charges for Private Investigator and Security Guard Licenses

Background

Under the *Private Investigators and Security Guards Act* no person can be engaged in the business of a contracted private investigator or security guard service, or act as a contracted private investigator or security guard, without an appropriate license. Licenses must be renewed and fees paid annually.

In return for the fee, Justice completes criminal record and reference checks, responds to public complaints, and conducts audits if problems become apparent.

In 1998-99, revenue generated from charges for private investigator and security guard licenses was $324,000, while direct and indirect costs were $151,000.

Considerations

- Private investigator and security guard licenses should be viewed as licenses to conduct business in the province.
- There is a specific head of power under the *Constitution Act* which authorizes a province to raise revenue through charges for business licenses.

Recommendation 9.1

The province should not reduce charges for private investigator and security guard licenses.

Further, the province should classify these charges as "business license charges."

Charges for the Appointment of Commissioners of Oaths

Background

Under the *Commissioners for Oaths Act*, a commissioner for oaths is empowered to administer oaths, and take and receive affidavits, declarations, and affirmations in Alberta. The commissioner can charge for each oath, affidavit, declaration, or affirmation administered or taken. Commissioners' charges are market driven.

To become a commissioner for oaths, the applicant must present to Justice a form signed by a lawyer acknowledging that the applicant understands the duties and functions of a commissioner for oaths. The ministry reviews the form and issues an appointment certificate if the form is in order. Appointments are renewable on the third anniversary of the applicant's birthdate.

In 1998-99, revenue generated from charges for the appointment of commissioners for oaths was $397,000, while direct and indirect costs were $221,000.

Considerations

- Appointments of commissioners for oaths should be viewed as licenses to conduct business in the province.
- There is a specific head of power under the *Constitution Act* which authorizes a province to raise revenue through charges for business licenses.

Recommendation 10.1

The province should not reduce charges for the appointment of commissioners for oaths.

Further, the province should classify these charges as "business license charges."

Charges for Pension Plan Annual Information Returns

Background

Under the *Employment Pension Plans Act*, registered employment pension plans in Alberta must file annual returns and pay $6.00 per plan member. Treasury reviews the returns and supporting documentation to ensure that the plans comply with legislation. Each member receives an annual statement from the plan administrator advising whether compliance has been met. If compliance has not been met, the plan administrator must advise members of its plan of action to meet compliance. Employment Pensions can de-register a plan for non-compliance. Pension plans must be registered in order to obtain tax deferred status with Revenue Canada.

In 1998-99, revenue generated from charges for pension plan annual information returns was $731,000, while direct costs were $355,000. When indirect costs such as office rental, utilities, office equipment, and information technology are included, the costs are approximately $500,000.

Considerations

- Charges for filing pension plan annual information returns should be viewed as fees in support of a valid regulatory system and, as such, should reflect the cost of operating the system.
- Employment Pensions establishes minimum standards in legislation and monitors for compliance. If compliance is met, provincial registration is maintained and the plan receives tax deferred status with Revenue Canada.
- Indirect costs, such as office rental and equipment and information technology, are significant expenses.

Recommendation 11.1

The province should reduce charges for filing pension plan annual information returns so that the revenue generated reflects the cost of operating the system.

Further, the province should include future systems redevelopment and worksite costs in the calculation of costs. Future systems redevelopment costs should be spread over the projected life of the system.

Charges for Mobile Home and Relocatable Industrial Accommodation Labels

Background

The *Safety Codes Act* requires that mobile homes and relocatable industrial accommodations be registered. The charge for registration is $30 per unit. In return, the customer receives a self-adhesive label bearing an unique identifier to affix to the registered unit, and the unit is recorded in the provincial database.

In 1998-99, revenue generated from charges for mobile home and relocatable industrial accommodation labels was $382,000, while direct and indirect costs were $46,000.

Consideration

- Charges for mobile home and relocatable industrial accommodation labels should be viewed as fees in support of a regulatory system and, as such, should reflect the cost of operating the system.
- Registration provides each mobile unit with an unique identifier label.

Recommendation 12.1

The province should reduce charges for mobile home and relocatable industrial accommodation labels so that the revenue generated reflects the cost of operating the system.

Further, the province should include future systems redevelopment and worksite costs in the calculation of costs. Future systems redevelopment costs should be spread over the projected life of the system.

CONCLUSION

The Committee's recommendations are aimed at achieving greater fairness, clarity, and accountability in Alberta's system of fees and charges. Alberta was the only province in Canada to undertake a formal review of its fees and charges in response to the *Eurig Estate* decision.